July 1, 2004

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: *FNPRM on the Section 252(i) "Pick and Choose" Rule*
CC Docket Nos. 01-338, 98-147 and 96-98

Dear Ms. Dortch:

CompTel/ASCENT ("CompTel") submits these comments in response to BellSouth's June 4, 2004 *ex parte* advocating modifications to the Commission's proposal to amend Section 51.809 of the Commission's Rules, 47 C.F.R. § 51.809, the "pick and choose" rule. Specifically, CompTel objects to BellSouth's request that the Commission adopt changes to the pick and choose rule that are basically the inverse of the Commission's proposal which would require carriers to adopt an existing interconnection agreement in its entirety only where the ILEC has on file a state approved SGAT from which requesting carriers could pick and choose provisions. In the absence of a state approved SGAT, the Commission proposes that the current pick and choose rule continue to apply to all approve interconnection agreements. In contrast, BellSouth urges the Commission to force requesting carriers to elect one of two far less appealing options. Under the first option, the CLEC could "adopt" the SGAT, which would mean that the CLEC must adopt the SGAT in its entirety, including the general terms and conditions and administrative provisions and must utilize the SGAT for any interconnection arrangements, services or network elements it wishes to purchase from the ILEC. CLECs would be precluded from selecting individual interconnection arrangements, services or network elements from the SGAT for incorporation into another interconnection agreement – i.e., in contrast to the Commission's proposal, the SGAT could not be used as the source of provisions to pick and choose. Under the second BellSouth option, a CLEC could adopt only the interconnection arrangements, services, network elements, and terms and conditions related thereto, from an existing

interconnection agreement, and must negotiate all other contract terms, including the general terms and conditions, and administrative provisions (including, but not limited to, those relating to billing dispute procedures, deposits, and dispute escalation).

At the outset, CompTel reiterates its view that Section 51.809 of the Commission's Rules does not merit reexamination at this time because it has not served as an impediment to parties reaching negotiated agreements. In the event, however, that the Commission determines to adopt its proposed revisions requiring carriers to adopt existing interconnection agreements in their entirety only where the ILEC has a state approved SGAT on file which would remain subject to the pick and choose rule, the Commission must clarify that in order to qualify, any such SGATs must be regularly updated to include arbitration results. In other words, the SGAT, upon which the ILEC relies to benefit from the new rule proposed by the Commission, must accurately contain provisions in all current interconnection agreements that were the result of a state commission, or FCC, arbitration.

Otherwise, SGATs will become quickly outdated and inconsistent with the current state of the law, and for this reason, will not provide a viable pick and choose alternative for CLECs. By failing to amend SGATs to reflect arbitration results within a reasonable time after decisions are issued, ILECs could effectively render their SGATs so unattractive as to defeat the Commission's purpose in maintaining a pick and choose option for CLECs in states where the ILEC has an SGAT on file. Requiring SGATs to be regularly updated to incorporate arbitration results is especially critical now that the Commission has granted Section 271 authority to all Regional Bell Operating Companies ("RBOCs") in all states. Having obtained the ability to offer long distance service, the RBOCs no longer have the incentive to ensure that their SGATs are kept current. If the ILECs can subject every one of their approved interconnection agreements to an all or nothing rule requiring carriers to adopt the agreement in its entirety or not at all simply by maintaining an SGAT on file, the ILECs will be able to deny CLECs the benefits of any ability to pick and choose by allowing their SGATs to become and remain outdated. In addition, depriving CLECs of the ability to pick and choose the results of prior arbitrations would simply waste scarce administrative and CLEC resources by forcing multiple arbitrations of provisions that a state commission has already arbitrated and decided.[1]

Under no circumstances should the Commission adopt BellSouth's proposed revisions. BellSouth's proposal would not only completely eliminate a CLEC's right to pick and choose, it would also eliminate a CLEC's right to adopt an existing interconnection agreement in its entirety. BellSouth provides no rationale for such a complete disembowelment of Section 252(i) of the Act nor for its proposal to subject CLECs opting for an SGAT versus those opting for an interconnection agreement to such

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[1] *See also In re Application of GTE Corporation and BellAtlantic Corporation For Consent To Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application To Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, FCC 00-221 (released June 16, 2000) at ¶303 and n. 695 (it would not be appropriate for BellAtlantic/GTE to require a requesting CLEC to arbitrate in an importing state a provision that previously was arbitrated and decided in that state as part of another agreement).

disparate treatment. Forcing CLECs to accept an SGAT in its entirety, including all of the general terms, conditions and administrative provisions, while denying them the right to adopt the general terms, conditions and administrative provisions of an existing interconnection agreement that they want to adopt in its entirety makes no sense and indeed flies in the face of the statutory language.

Section 252(i) provides that

> a local exchange carrier shall make available any interconnection, service or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier under the same terms and conditions as those provided in the agreement.

BellSouth's suggestion that CLECs be required to renegotiate the general terms, conditions and administrative provisions of any adopted interconnection agreement may very well eviscerate their Section 252(i) rights to obtain any interconnection, service or network element provided under the terms of the adopted agreement on the same terms and conditions as those provided in the adopted agreement. In instances where the general terms, conditions and administrative provisions in adopted agreements were the results of arbitrations, CLECs and state commissions would also be required to relitigate those terms, conditions and administrative provisions in order to get the same results.

For the foregoing reasons, CompTel respectfully urges the Commission to make no changes to Section 51.809 of the Commission's Rules. In the event the Commission decides to limit CLECs' opt-in rights to entire interconnection agreements so long as the ILEC has an approved SGAT on file from which CLECs can pick and choose provisions, as proposed, the SGAT condition should only be deemed satisfied where the ILEC routinely updates the SGAT to reflect the results of state commission, or FCC, arbitrations.

Thank you for your consideration of our issues. Please contact me or Mary Albert at (202) 296-6650 if you have any questions or want to discuss this matter in more detail.

Respectfully submitted,

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